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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

DAVID A. LACY, an individual,

Defendant.

**REPLY BRIEF IN SUPPORT OF
MOTION TO EXCLUDE EVIDENCE
OF OR REFERENCE TO PRIOR
MISDEMEANOR**

Civil No. 2:09-cr-00045

Judge Ted Stewart

Defendant, David A. Lacy, by and through his counsel of record, hereby submits this reply brief in support of his motion to exclude evidence of or reference to a prior misdemeanor conviction. The motion should be granted for several reasons. First, the government failed to provide the required notice of its intent to use 404(b) evidence even though such notice was requested in January 2010. Second, it is not relevant. The government contends that the

“evidence is relevant to establish defendant’s knowledge regarding the illegality of his conduct in excavating and/or selling Native American artifacts taken from public lands.” Opposition at 1-2. However, his knowledge of the wrongfulness of doing so is not an element of the offenses charged against Mr. Lacy. Third, the prejudice of admitting the conviction clearly outweighs the probative value. A 30-year-old misdemeanor conviction is so old that it is no longer probative of any relevant fact. However, there is significant potential prejudice from admitting the conviction. Accordingly , the conviction should be excluded.

DATED this 30th day of June 2011.

RAY QUINNEY & NEBEKER P.C.

/s/ Matthew R. Lewis

Matthew R. Lewis

Matthew M. Cannon

Attorneys for Defendant David A. Lacy

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of June 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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